(b)

No. 05-669

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY AND
ATLANTIC RICHFIELD COMPANY,
Petitioners,

v.

REJANE BURTON,
ACTING ASSISTANT SECRETARY OF THE INTERIOR
FOR LAND AND MINERALS MANAGEMENT, *et al.*,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether the limitations period in 28 U.S.C. § 2415(a) applies to federal agency orders requiring the payment of money claimed under a lease or other agreement.

LIST OF PARTIES AND PARTIES TO THE PROCEEDINGS BELOW

Petitioner BP America Production Company is the successor in interest to Amoco Production Company and Vastar Resources, Incorporated. Petitioner Atlantic Richfield Company, along with Amoco Production Company and Vastar Resources, Incorporated, were appellants in the court of appeals and plaintiffs in the district court.

Respondents are Rejane Burton, in her capacity as Acting Assistant Secretary of the Interior for Land and Minerals Management; Dirk Kempthorne, in his capacity as Secretary of the Interior; Southern Ute Indian Tribe; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; Burlington Resources Inc.; Steve Westly, in his capacity as California State Controller; Jicarilla Apache Nation; the State of Colorado; and the State of New Mexico.

Respondent Kempthorne is the successor to Gale Norton, who was respondent in this Court, appellee in the court of appeals, and defendant in the district court. She is the successor to Bruce Babbitt, who was defendant in the district court. Respondent Burton is the successor to Rebecca W. Watson, who was appellee in the court of appeals. Watson was the successor to Wallace P. DeWitt, who was defendant in the district court. DeWitt was the successor to Sylvia V. Baca, who was defendant in the district court.

Respondent Southern Ute Indian Tribe was an intervenor supporting appellees in the court of appeals and an intervenor supporting defendants in the district court. Respondents Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; Steve Westly, in his capacity as California State Controller; Jicarilla Apache Nation; the State of Colorado; and the State of New Mexico, by and through the State of New Mexico Office of the Attorney General, were all intervenors supporting appellees in the court of appeals. Respondent Burlington Resources Inc. was an intervenor supporting the appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioners BP America Production Company and Atlantic Richfield Company state the following:

On December 31, 2001, Amoco Production Company and Vastar Resources, Inc. merged and formed BP America Production Company. BP America Production Company is wholly owned by BP Company North America Inc. BP Company North America Inc. is wholly owned by BP Corporation North America Inc. BP Corporation North America Inc. is wholly owned by BP America Inc. Atlantic Richfield Company is wholly owned by BP America Inc.

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Respondents.

**On Writ of Certiorari to the
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for the District of Columbia Circuit**

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is published at 410 F.3d 722 (D.C. Cir. 2005). The opinion of the district court (Pet. App. 21a-56a) is published at 300 F. Supp. 2d 1 (D.D.C. 2003). The September 12, 2000, decision of the Department of Interior's Minerals Management Service (Pet. App. 68a-97a), and the May 27, 1997, Minerals Management Service Letter Order to Amoco Production Company (Pet. App. 144a-156a), are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2005. The court of appeals denied a petition for rehearing on August 24, 2005 (Pet. App. 175a). The petition for a writ of certiorari was filed on November 22, 2006, and granted, limited to Question 2, on April 17, 2006. J.A. 24. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 2 of the Act of July 18, 1966, Pub. L. No. 89-505, 80 Stat. 304, codified as amended at 28 U.S.C. § 2415 *et seq.*, is set forth in its entirety in the Appendix to the Petition for a Writ of Certiorari, Pet. App. 179a-182a, and in the Appendix to this brief, App., *infra*, 1a-4a. In relevant part, it provides:

> (a) Subject to the provisions of section 2416 of this title, and except as otherwise provided by Congress, every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later * * * .
>
> * * * * *
>
> (i) The provisions of this section shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31.

28 U.S.C. § 2415(a), (i).

STATEMENT

The six-year statute of limitations codified at 28 U.S.C. § 2415(a) applies to "every action for money damages brought by the United States * * * which is founded upon any contract" except administrative offsets, which are expressly excluded. The question in this case is whether Section 2415(a) otherwise applies to administrative actions founded on contract, such as actions for past-due royalties claimed under federal leases for oil and gas properties.

I. Statutory Background

A. The Mineral Leasing Act of 1920 ("MLA"), 30 U.S.C. § 181 *et seq.*, authorizes the Secretary of the Interior to lease public-domain lands to private parties for oil and gas production. See 30 U.S.C. § 226(a) (providing that "lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary"). To that end, the MLA establishes competitive and non-competitive means of awarding leases, and specifies certain mandatory and prohibited lease terms and conditions. See, *e.g.*, 30 U.S.C. §§ 223, 226. Lessees must pay the royalty established in the lease, which cannot be less than "12½ per centum in amount or value of production removed or sold from the lease." 30 U.S.C. § 226(b)(2)(A)(ii).

Since 1911, actions by private parties *against the United States* for breach of contractual obligations, such as lease agreements, have been subject to a six-year statute of limitations. See Act of March 3, 1911, 36 Stat. 1093, codified as amended at 28 U.S.C. § 2401 (providing that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues"). By contrast, until 1966, there was no general statute of limitations governing actions *by the United States* against private parties for breach of the same agreements. Instead, those suits ordinarily were governed by the rule *quod nullum tempus occurrit regi*—"no time shall run against the King"—and the United States had an infinite amount of time within which to seek recovery. The United States was generally "exempt from the consequences of its laches, and from the operation of statutes of limitations." *Guar. Trust Co. of N.Y.* v. *United States*, 304 U.S. 126, 132 (1938); see also *Phillips* v. *Comm'r*, 283 U.S. 589, 602-603 (1931). Thus, even with respect to a single contract, private claims against the government were subject to a six-year limitations period, but government claims against the

private party would persist in perpetuity. See Sen. Rep. No. 1328, 89th Cong., 2d Sess., 11-12 (1966).

To address that disparity, in 1966 Congress enacted 28 U.S.C. § 2415, "a statute aimed at equalizing the litigative opportunities between the Government and private parties." *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 521 (1967). As the Senate Report accompanying that legislation observed:

> Many of the contract and tort claims asserted by the Government are almost indistinguishable from claims made by private individuals against the Government. Therefore it is only right that the law should provide a period of time within which the Government must bring suit on claims just as it now does as to claims of private individuals. * * * [E]quality of treatment in this regard * * * is required by modern standards of fairness and equity.

Sen. Rep. No. 1328, *supra*, at 2.

The Senate Report also stated that "[m]ore limitations appear[ed] desirable" for a variety of practical reasons. Sen. Rep. No. 1328, *supra*, at 12. Such limitations periods have the "salutary effect" of ensuring that "necessary witnesses, documents, and other evidence are still available," and that the memories of "witnesses are better." *Id.* at 2. "Even if the passage of time does not prejudice the effective presentation of a claim," the Report stated, "the mere preservation of records on the assumption that they will be required * * * increases the cost of keeping records." *Ibid.* The imposition of a limitations period also enhances governmental efficiency by encouraging agencies and government employees to pursue claims promptly. *Id.* at 12.

Section 2415 provides limitations periods for actions founded on contract, arising in tort, and for money erroneously paid. 28 U.S.C. § 2415(a), (b), (d). With respect to actions founded on contract, it provides:

> [E]very action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract * * * shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

28 U.S.C. § 2415(a).

Section 2415 also provides an exception to permit the government to assert claims by counterclaim or offset where it is a defendant in litigation. Under Section 2415(f), the limitations period does not prevent "the assertion, in an action against the United States" or its officers, "of any claim of the United States" or its officers "against an opposing party, a co-party, or a third-party that arises out of the [same] transaction." 25 U.S.C. § 2415(f). For claims arising out of different transactions, Section 2415(f) provides that otherwise time-barred claims can "be asserted only by way of offset and may be allowed in an amount not to exceed the amount of the opposing party's recovery." *Ibid.*

Section 2415 separately addresses *administrative* offsets (offsets the government makes, absent litigation, against its debts to reduce or eliminate the amounts it will pay). In particular, Section 2415(i) exempts administrative offsets from Section 2415's limitations period entirely: "The provisions of this section," it declares, "shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." 28 U.S.C. § 2415(i). That provision was added in 1982 as part of the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749, 1754. At the same time, Congress established a separate 10-year limitations period for administrative offsets, 96 Stat. 1754, which now appears at 31 U.S.C. § 3716(c)(1).

B. Since enacting Section 2415 in 1966, Congress has repeatedly revised it. For example, Section 2415(g) provides that all claims that accrued before Section 2415's enactment are deemed to have accrued on the date of its enactment. 28 U.S.C. § 2415(g). As the six-year limit approached in 1972, however, the agencies responsible for pursuing contract claims on behalf of Indian tribes advised Congress that, absent an extension, many such claims would be barred. As a result, Congress enacted a series of provisos to extend the time for such claims, starting with a proviso affording them an additional 90 days. See, *e.g.*, Act of July 18, 1972, Pub. L. No. 92-353, 86 Stat. 499, codified at 28 U.S.C. § 2415(a) (second proviso). Lawyers representing several tribes explained to Congress that a further amendment was necessary to preserve, among others, a significant number of claims arising from "violations of lease agreements." *Time Extension For Commencing Actions on Behalf of Indians: Hearing before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess. 38 (1972) (joint statement of Arthur Lazarus, Jr., Martin J. Sonosky, and Charles A. Hobbs). Congress therefore extended the limitations period for pre-1966 Indian claims again, this time by five years. Act of Oct. 13, 1972, Pub. L. No. 92-485, 86 Stat. 803. Eventually, Congress established a system under which the limitations period for any claim arising before Section 2415's enactment would not be barred until a specified period after the Secretary of the Interior publishes the claim. See Indian Claims Limitation Act of 1982, § 2(a), 96 Stat. 1976, codified at 25 U.S.C. § 2415(a) (third and fourth provisos).

Most recently, Congress prospectively adopted a seven-year limitations period for any "judicial proceeding or demand" relating to royalties under a federal oil and gas lease. Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 ("FOGRSFA"), Pub. L. No. 104-185, 110 Stat. 1700, codified at 30 U.S.C. § 1724(b). The new provision, however, does not address the limitations period for

Indian claims, claims under oil and gas leases pertaining to production before September 1, 1996, or claims under federal leases for other minerals. Those continue to be governed by Section 2415. FOGRSFA also adjusted applicable record-retention requirements. The MLA previously required lessees to retain records for six years—the limitations period for government claims—unless the Secretary directed lessees to retain them longer. See 30 U.S.C. § 1713(a) (1983). FOGRSFA changed the record-retention period to correspond with the new limitations periods, requiring lessees to retain records for "the same period of time during which a judicial proceeding or demand may be commenced under * * * this section." 30 U.S.C. § 1724(f).

II. Proceedings In This Case

A. The Lease And Proceedings Before The Secretary

About a half-century ago, Amoco Production Company ("Amoco") entered into leases with the Secretary of the Interior for the production of oil and natural gas in New Mexico's San Juan Basin. J.A. 10-23.[1] The leases included bonding requirements; imposed record-keeping requirements; and mandated that Amoco keep its records and premises open for inspection. *Id.* at 11, 14. The leases also required Amoco to pay a "12½ percent royalty on the production removed or sold from the leased lands." *Id.* at 23. Consistent with 60 years of Department of Interior and Minerals Management Service ("MMS") practice, Amoco calculated the royalty as a percentage of the "value of production * * * from the lease" by determining the value of the gas as produced "at the wells." See *Indep. Petroleum Ass'n of Am.* v. *Armstrong*, 91 F. Supp. 2d 117, 125 (D.D.C. 2000), rev'd in part, aff'd in part, 279 F.3d 1036 (D.C. Cir. 2002); Pet. 15-23.

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[1] Petitioner BP America Production Company is Amoco's successor in interest. References to Amoco encompass Amoco and its predecessors in interest.

On April 22, 1996, MMS issued a "Dear Operator/Payor" Letter to producers of coalbed methane gas in the vicinity of New Mexico's San Juan Basin, including Amoco. Pet. App. 170a-174a. The 1996 Payor Letter provided new "guidelines" to producers on how to report and pay royalties on coalbed methane. *Id.* at 170a. Among other things, the letter directed that royalties be based not on the value of gas as produced at the well, but on the enhanced value the gas acquires, after transportation to off-site treatment facilities, when the gas is treated to meet the quality requirements for further transportation in mainline pipelines. The government thus rejected the former practice of calculating royalties on the lesser value of untreated gas as produced at the lease site. *Id.* at 170a-171a.[2]

On May 27, 1997, MMS issued an order directing Amoco to pay additional royalties based on an audit conducted by the State of New Mexico. The order asserted that Amoco had not computed its royalty payments for the period from January 1989 through December 1996 in accordance with the standards set forth in the 1996 Payor Letter. Pet. App. 144a-156a. The order informed Amoco that "[a]ppropriate

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[2] MMS's 1988 regulations provide that the "value of production" shall not "be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances." 30 C.F.R. § 206.153(h). The regulations allow certain deductions for transporting the gas, *id.* § 206.157, and for certain aspects of processing, *id.* § 206.158. They also provide that the "lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government." *Id.* § 206.153(i). "Marketable condition" is defined as products "sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area." *Id.* § 206.151. For the first time, the 1996 Payor Letter construed the "marketable condition" regulations to require lessees to incur the cost of processing gas to meet the quality requirements of mainline pipelines used to transport gas to distant end-use markets; formerly, the gas was considered in marketable condition if sufficiently free of impurities to be sold to purchasers on or near the well.

late payment charges pursuant to 30 C.F.R. § 218.102 (1996) will be computed and billed to Amoco upon receipt of payment of the additional royalties due." Pet. App. 154a. It cautioned that "failure to comply with the terms of this order may be considered a violation" that could result in "civil penalties." *Ibid.* Finally, it notified Amoco that it had "the right to appeal in accordance with the provisions of 30 C.F.R. Part 290 (1996)." *Ibid.*

Amoco appealed MMS's order to the Department of Interior. Amoco disputed MMS's interpretation of the royalty regulations; urged that the 1996 Payor Letter was issued and applied in violation of the Administrative Procedures Act; and argued that the demand for any royalties that accrued more than six years before the MMS order's issuance was barred by the limitations period in 28 U.S.C. § 2415(a). See Admin. R. 0316. The Assistant Secretary denied most of Amoco's appeal. Pet. App. 68a-97a. With respect to the statute of limitations, the Assistant Secretary asserted that "[t]his proceeding is an administrative appeal and the statutory bar [in 28 U.S.C. § 2415(a)] is inapplicable." *Id.* at 96a.

B. Proceedings In District Court

Amoco, along with Atlantic Richfield Company and Vastar Resources ("ARCO/Vastar") (which had received a similar MMS order on January 27, 1997), sought review of the decisions in the United States District Court for the District of Columbia. On cross-motions for summary judgment, the district court ruled in favor of the government. Pet. App. 21a-56a. Although the district court found that MMS's construction of its royalty valuation requirements was "somewhat circuitous," *id.* at 32a, the court upheld that construction because it was reasonable, *id.* at 39a-40a.

On the statute-of-limitations issue, the district court held that Section 2415(a) does not foreclose the collection of additional royalties accruing more than six years before the May 27, 1997, MMS Order. Pet. App. 48a-55a. The court acknowledged a split of authority on whether Section

2415(a)'s limitations period applies to administrative actions. *Id.* at 52a. The district court declined to follow the Tenth Circuit's *en banc* holding in *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001 (2001), that Section 2415(a) does apply to administrative proceedings. Instead, it followed its earlier decision in *Samedan Oil Corp.* v. *Deer*, No. 94-2123, 1995 WL 431307 (D.D.C. June 14, 1995), rev'd on other grounds, *Indep. Petroleum Ass'n of Am.* v. *Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996), to hold that the limitations period in 28 U.S.C. § 2415(a) does not bar agency actions to impose and collect additional royalties (along with associated interest) in administrative proceedings. Pet. App. 55a.

C. The D.C. Circuit's Decision

Amoco and ARCO/Vastar appealed, and the D.C. Circuit affirmed. Pet. App. 1a-20a. With respect to the royalty-valuation issue, the D.C. Circuit acknowledged that Amoco and ARCO/Vastar had "present[ed] a textually plausible reading" of the statute, but held that it was required to defer to Interior's contrary interpretation. Pet. App. 8a-9a. The D.C. Circuit likewise rejected the argument that the 1996 Payor Letter violated the APA. *Id.* at 15a-16a.

Turning to the statute of limitations, the D.C. Circuit held that Section 2415(a) does not apply to MMS orders assessing additional royalties. Pet. App. 16a-20a. The D.C. Circuit observed that "the statute as a whole is admittedly less [than] clear." *Id.* at 17a. Nonetheless, the court concluded that Section 2415's use of the phrase "action for money damages" and the word "complaint" suggest that it was meant to apply only to actions brought in court and to exclude actions before administrative agencies. *Ibid.* Relying on the definition of the words "action" and "complaint" from *Black's Law Dictionary* in particular, the D.C. Circuit declared that "[t]he phrase 'action for money damages' points strongly to a suit in a court of law," and the term "complaint" should be construed as "an 'initial pleading' under 'codes or Rules of Civil Procedure' that contains, *inter*

alia, a 'statement of the grounds upon which the *court's* jurisdiction depends.'" *Id.* at 16a-17a (quoting *Black's Law Dictionary* 285 (6th ed. 1990)).

The D.C. Circuit acknowledged that its construction rendered another provision of Section 2415—Section 2415(i)'s exception for collections "by means of administrative offset"—superfluous. Pet. App. 17a-18a. The court of appeals thus did not dispute that, if Section 2415 did not apply to administrative actions generally, "there would have been no need to except administrative offsets in subsection (i)." *Id.* at 18a. It agreed that courts should "construe a statute so as to give effect to 'every clause and word'" whenever possible. *Ibid.* And it acknowledged that other courts, for that very reason, had interpreted Section 2415(a) as extending to administrative actions as well as actions filed in court. *Ibid.* (citing *OXY USA*, *supra*, and *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052 (Fed. Cir. 1996)).

The D.C. Circuit nonetheless parted company with those decisions. It held that, in the circumstances of this case, it was permissible to render subsection (i) superfluous because that provision had been added "to moot a debate between the Justice Department and the Comptroller General about the reach of subsection 2415(a) in the context of administrative offsets." Pet. App. 18a. The court concluded that Congress had added Section 2415(a) to make the statute "crystal clear rather than just clear" in that context. *Id.* at 19a (internal quotation marks omitted). The court of appeals also stated that "statutes of limitations against the sovereign are to be strictly construed." *Ibid.*

SUMMARY OF ARGUMENT

I. A. Recognizing that it is neither fair nor efficient to expose everyone doing business with the government to damages claims in perpetuity, Congress in 1966 established a comprehensive set of limitations periods applicable to government damages actions sounding (among other things) in contract. In establishing that statute of limitations, Con-

gress used expansive terms: "*[E]very action* for money damages brought by the United States * * * which is founded upon *any* contract," the statute declares, is "barred unless the complaint is filed within six years after the right of action accrues * * * ." 28 U.S.C. § 2415(a) (emphasis added).

Focusing primarily on the definitions of "action" and "complaint," the D.C. Circuit in this case declared that Section 2415(a) should be read as addressing only actions in court. Thus, in the D.C. Circuit's view, the passage of six years may bar the claim's assertion in court, but the government can assert precisely the same claim for the same relief in administrative proceedings in perpetuity. That, of course, is wholly at war with the statute's purpose and destroys the repose Section 2415(a) was supposed to provide. It is also in serious tension with Congress's decision to employ the facially broad terms "every action" and "complaint" in the statute, terms that are sufficiently capacious to encompass the initiation of adversarial proceedings for the recovery of money before administrative agencies and judicial bodies alike. Indeed, the decisions of this Court, numerous Acts of Congress, and a wealth of agency regulations all use the terms "action" and "complaint" to refer to proceedings before administrative agencies.

B. Refusing to give those terms their full sweep here would violate "a cardinal principle of statutory construction"—that courts "must give effect, if possible, to every clause and word of a statute." *Williams* v. *Taylor*, 529 U.S. 362, 404 (2000) (internal quotation marks omitted). As the D.C. Circuit observed, Section 2415(i) provides that the limitations period otherwise imposed by Section 2415(a) shall not prevent the United States from "collecting any claim * * * by means of administrative offset." Pet. App. 51a. If Section 2415 did not limit administrative actions in the first place, that exception for administrative offsets would be superfluous. This Court's cases "express a deep reluctance to interpret a statutory provision so as to render

superfluous other provisions in the same enactment." *Pennsylvania Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 562 (1990).

C. Construing Section 2415(a) to exclude administrative actions is also at odds with the statutory structure. Section 2415 establishes a general six-year limitations period for government contract claims. But it then provides for more favorable treatment of administrative offsets through which the government may, in satisfaction of a debt owed to it, *retain* money it would otherwise owe: As noted above, Section 2415(i) excepts administrative offsets from the six-year period in favor of a more lenient 10-year limitations period. The D.C. Circuit's construction would accord administrative actions to *exact* money from private individuals even more favorable treatment, subjecting them to no limitations period whatsoever. There is simply no logical reason why Congress would have wanted to provide a six-year limit for *lawsuits to coerce* payment, and a 10-year limit on administrative offsets that allows administrative *withholding of payment*, while subjecting affirmative administrative actions to coerce payments to no limitations period at all. That is also contrary to the pattern elsewhere in Section 2415, which treats offsets and other claims asserted in *response* to a lawsuit more favorably than affirmative efforts to coerce payment. See 28 U.S.C. § 2415(f) (allowing the assertion of an offset where the government is sued, even if the offset would be barred in an action by the government). And it destroys Congress's careful effort to establish a document-retention period that corresponds to the limitations period.

D. Ultimately, the D.C. Circuit's interpretation of Section 2415 guts the very purpose of the statute—the provision of repose. Long ago, this Court observed that allowing "actions of debt" to "be brought at any distance of time" is "utterly repugnant to the genius of our laws." *Adams* v. *Woods*, 6 U.S. (2 Cranch) 336, 342 (1805). Yet that is exactly the consequence of the D.C. Circuit's decision. Al-

though an agency may be barred from bringing a damages action in court after six years, it can seek the exact same relief on the exact same contract in perpetuity through administrative proceedings. The fundamental unfairness of that end-run is compounded by the fact that administrative agencies may collect interest on such claims, even if the delay in seeking payment is entirely attributable to the agency's dereliction. That result also undermines Congress's practical reasons for adopting the limitations period: ensuring that claims are brought only when necessary evidence remains available, reducing record-retention costs, and promoting timely pursuit of government claims. Sen. Rep. No. 1328, 89th Cong., 2d Sess. 2 (1966).

II. The D.C. Circuit's construction is also at odds with Section 2415's origins and history.

A. It was the government's potential use of administrative proceedings to collect stale contract claims that prompted Congress to call for a statute of limitations in the first place. The statute of limitations in Section 2415 should not be construed to provide no relief from the precise abuses that gave rise to its enactment.

B. The final clause of Section 2415's first sentence, moreover, gives agencies additional time when administrative proceedings are required by law. 28 U.S.C. § 2415(a). In particular, agencies have one year following the completion of required proceedings to bring an action in court. In adopting that provision, Congress sought to "toll" the otherwise applicable limitations period. The D.C. Circuit's interpretation, however, would transform that provision into an indefinite statute of limitations for court actions under which the government can evade the six-year limit by delaying the filing of an administrative action for whatever period it wants. Reading such a gaping loophole into the statute is contrary to the "elementary rule of construction that '[an] act cannot be held to destroy itself.'" *Citizens Bank of Md.* v. *Strumpf*, 516 U.S. 16, 20 (1995) (quoting

Tex. & Pac. R.R. Co. v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907)).

C. The D.C. Circuit's interpretation of Section 2415(a) is also inconsistent with the history of amendments to Section 2415(a). Congress repeatedly found it necessary to amend Section 2415(a) to extend the period for certain Indian contract claims, including mineral and oil and gas leases that could be pursued administratively. If the D.C. Circuit were correct that administrative claims are exempt from Section 2415 and therefore can be brought in perpetuity, there would have been little need for those amendments.

III. Contrary to the United States' position in its response to the petition for a writ of certiorari, an MMS demand for past-due royalties is "founded upon a contract" and seeks "money damages." Br. in Opp. 17 (quoting 28 U.S.C. § 2415(a)). Because the D.C. Circuit did not address those issues, this Court need not address them in the first instance.

A. In any event, MMS's claim derives from the lease, and thus is indisputably "founded on" contract. Indeed, the government has repeatedly stated as much outside the context of litigation, and every court to consider the issue has so concluded.

B. It is equally clear that the government's demand for the payment of past-due money and interest is a claim for compensatory rather than specific relief. It is the quintessential claim for "money damages."

ARGUMENT

When Congress enacted a statute of limitations for government actions founded on contract, it employed "patently broad" terms. *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001, 1005 (10th Cir. 2001) (*en banc*). It provided that "*every* action for money damages brought by the United States * * * which is founded upon *any* contract shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decision shall

have been rendered in applicable administrative proceedings required by contract or by law, whichever is later." 28 U.S.C. § 2415(a) (emphasis added). That language is sufficiently broad to encompass administrative as well as judicial actions to recover damages (past-due payments and interest) under federal leases for mineral-producing properties.

The court of appeals found "the statute as a whole" to be "less clear." Pet. App. 17a. Focusing in particular on the dictionary definitions of two words—"action" and "complaint"—the D.C. Circuit ruled that Section 2415(a) "by its terms, does not cover administrative actions." *Id.* at 19a. But this Court has, for more than a century, "stressed that '[i]n expounding a statute, [the Court] must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *U.S. Nat'l Bank of Or.* v. *Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (quoting *United States* v. *Heirs of Boisdore*, 49 U.S. (8 How.) 113, 122 (1849)). Construing Section 2415(a) to exclude administrative actions, as the court of appeals did here, would render an entire provision—Section 2415(i)'s exception for administrative offsets—superfluous.

More fundamentally, construing Section 2415(a) to exclude administrative actions is wholly at war with Section 2415's "object and policy." Under that construction, those dealing with the government would confront potential damages claims founded on contract in perpetuity, because the government could always bring an administrative collection action. The construction thus establishes precisely the eternal damages exposure that Section 2415 was meant to eliminate, and wholly eviscerates the repose that Section 2145 was enacted to provide.

I. Section 2415's Plain Text Encompasses Administrative Proceedings For Contract Royalties

A. The Words "Action" And "Complaint" Are Commonly Used In Connection With Administrative Proceedings

"To discern Congress' intent," this Court "examine[s] the explicit statutory language and the structure and purpose of the statute." *Ingersoll-Rand Co.* v. *McClendon*, 498 U.S. 133, 138 (1990). Focusing primarily on the definitions of "action" and "complaint" in *Black's Law Dictionary*, the D.C. Circuit held that the language of Section 2415(a), "by its terms, does not cover administrative actions." Pet. App. 16a-17a, 19a. "The phrase 'action for money damages,'" the D.C. Circuit urged, "points strongly to a suit in a court of law," and the term "complaint" should be construed as "an 'initial pleading' under 'codes or Rules of Civil Procedure' that contains, *inter alia*, a 'statement of the grounds upon which the *court's* jurisdiction depends.'" *Id.* at 16a-17a (quoting *Black's Law Dictionary* 285 (6th ed. 1990)).

In ordinary, modern legal usage, however, the terms "action" and "complaint" assuredly are *not* restricted to suits in court. Even a cursory review of this Court's cases, the United States Code, and the Code of Federal Regulations reveals that the words "action" and "complaint" are commonly used in reference to purely administrative proceedings.

1. This Court's cases have often construed the term "action" to encompass administrative actions. In *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 558 (1986), for example, this Court addressed whether the phrase "any action" in Section 304(d) of the Clean Water Act would permit the recovery of attorney's fees and costs incurred in administrative proceedings. The statute provided that a court, "in issuing any final order in any action brought pursuant to * * * this section, may award costs of litigation * * * to any party, whenever the

court determines such award is appropriate." 42 U.S.C. § 7604(d). In that case, the decisions below had awarded fees for administrative proceedings before state agencies and the EPA. Seeking to overturn the award, the Commonwealth of Pennsylvania and the United States (like the D.C. Circuit here) insisted that "the 'actions' contemplated by § 304(d) are judicial actions, not administrative proceedings." *Delaware Valley*, 478 U.S. at 557-558.

This Court "reject[ed] these limiting constructions" on the phrase "any action." *Delaware Valley*, 478 U.S. at 558. The Court agreed that there was a distinction between the language of Section 304(d), which provides for fees in "any action," and the language of 42 U.S.C. § 1988, which provides for fees "'in any action *or proceeding*' * * * ." 478 U.S. at 559 (emphasis added). But the Court refused to attach any significance to that, declaring that "this distinction is not a sufficient indication that Congress intended § 304(d) to apply only to judicial, and not administrative, proceedings." *Ibid.*

In *West* v. *Gibson*, 527 U.S. 212 (1999), this Court again declined to construe the word "action" as limited to judicial, rather than administrative, actions. In that case, the Court considered whether the EEOC could award compensatory damages under an amendment to Title VII that authorized such awards "'[i]n an *action* brought by a complaining party.'" *Id.* at 215 (quoting 42 U.S.C. § 1981a(a)(1)) (emphasis added). Seeking to confine such awards to judicial proceedings, the respondent relied on Congress's use of the word "action," urging that "the word 'action' often refers to judicial cases, not to administrative 'proceedings.'" *Id.* at 220. Examining the statute's text, structure, and purpose, the Court rejected the claim that "by using the word 'action,' Congress intended to deny that compensatory damages is 'appropriate' administrative relief." *Id.* at 220-221.

Consistent with this Court's construction of the term "action," Congress and administrative agencies alike pervasively use the word "action" to denote adversary proceed-

ings before an agency. A variety of statutes use the word "action" to denote administrative proceedings, whether brought to recover money,[3] or otherwise enforce obligations.[4] Still more reflect the common understanding that administrative proceedings are generally called "actions" by using the phrase "administrative action" in contradistinction to "civil action" or "criminal action."[5]

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[3] See, *e.g.*, 42 U.S.C. § 5205(a)(1) (statute of limitations for "administrative action[s] to recover any payment[s] made to a State or local government for disaster or emergency assistance"); 50 U.S.C. app. § 593(f)(1) (provision staying certain "civil or administrative action[s] for damages" based on negligence or liability of a service-member).

[4] See, *e.g.*, 12 U.S.C. § 1441a(b)(11)(G) (requiring Resolution Trust Corporation to maintain staff to assist in certain "cases, civil claims, and administrative enforcement actions"); 15 U.S.C. § 1681s(c)(4) (Fair Credit Reporting Act provision limiting state action during pendency of a federal "civil action" or "administrative action").

[5] See, *e.g.*, 15 U.S.C. § 78u(h)(9)(B) (Securities Exchange Act provision stating that certain "[f]inancial records * * * may be disclosed or used only in an administrative, civil, or criminal action"); 15 U.S.C. § 7212(b)(2)(F) (Sarbanes-Oxley Act provision requiring accounting firms, when applying for registration, to provide "information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm"); 15 U.S.C. § 7706(f)(8) (CAN-SPAM Act provision limiting state action during pendency of a federal "civil action" or "administrative action"); 18 U.S.C. § 3486(e)(1) (Health Insurance Portability and Accountability Act provision that generally prohibits the use of certain health information in "any administrative, civil, or criminal action"); 26 U.S.C. § 7803(d)(1)(G) (Internal Revenue Service Restructuring and Reform Act provision requiring annual report to include "information regarding any administrative or civil actions with respect to violations of the fair debt collection provisions"); 31 U.S.C. § 3729(a)(7)(C) (treble damages unavailable under the False Claims Act if defendant self-reports the false claims while "no criminal prosecution, civil action, or administrative action had commenced * * * with respect to such violation"); 42 U.S.C. § 8512(d)(4) (revocation of state enforcement authority shall not affect certain pending "administrative or civil action[s] or proceeding[s]"); 42 U.S.C. § 8521(g)(2)(C) (similar); 42 U.S.C. § 9622(g)(1) (CERCLA provision setting forth conditions for *de minimus* settlements "in an administrative or civil action").

Likewise, federal agency regulations uniformly recognize that the term "action" may encompass administrative and judicial proceedings alike. Some expressly define the word "action" to mean "any judicial or administrative proceeding." See, *e.g.*, 12 C.F.R. § 545.121(a)(1)(i). Others reflect the common understanding that the word "action" may encompass both by referring to administrative proceedings as "actions,"[6] or referring to "administrative actions" and "judicial actions" in the same breath.[7] Indeed, even as it

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[6] 7 C.F.R. § 3018.400(c) (Dep't of Agric.) (discussing "administrative action[s] for the imposition of a civil penalty" for failure to file disclosure forms); 10 C.F.R. § 601.400(c) (Dep't of Energy) (similar); 12 C.F.R. § 411.400(c) (Export-Import Bank) (similar); 12 C.F.R. § 1412.2(l)(1) (Farm Credit Sys. Ins. Corp.) (defining "prohibited indemnification payment" to include reimbursement for a civil money penalty or judgment resulting from "any administrative or civil action" instituted by the Farm Credit Administration); 14 C.F.R. § 13.18(a)(1) (FAA) (enforcement procedures applicable to certain "action[s] in which the FAA seeks to assess a civil penalty by administrative procedures"); 31 C.F.R. § 501.703(b) (Treasury Dep't) (administrative process for enforcing Trading With the Enemy Act sanctions an "action"); 10 C.F.R. Pt. 820 App. A, IX.b. (Dep't of Energy) ("Administrative actions, such as determination of award fees where DOE contracts provide for such determinations, will be considered separately from any civil penalties that may be imposed under this Enforcement Policy"); 12 C.F.R. § 359.0(c) (FDIC) (barring insured institutions from indemnifying institution-affiliated parties for costs from certain "administrative or civil enforcement action[s] commenced by any federal banking agency").

[7] 10 C.F.R. § 9.104(a)(10) (Nuclear Reg. Comm'n) (addressing meetings concerning "the Commission's participation in a civil action or proceeding or an action or proceeding before a state or federal administrative agency"); 10 C.F.R. § 51.10(d) (Nuclear Reg. Comm'n) (decisions "initiating or relating to administrative or judicial civil or criminal enforcement actions or proceedings" not subject to Section 102(2) of the National Environmental Policy Act); 15 C.F.R. § 904.2 (Nat'l Oceanic and Atmospheric Admin.) (defining "settlement agreement" as "any agreement resolving all or part of an administrative or judicial action"); 28 C.F.R. § 802.25 (Court Servs. & Offender Supervision Agency for DC) (defining "legal proceeding" as including any "judicial or administrative action"); 32 C.F.R. § 93.3(d) (Dep't of Defense) (defining "litigation" as including all "judicial or administrative actions"); 37 C.F.R. § 104.1 (U.S. Patent

disputes the applicability of Section 2415, the Department of Interior repeatedly describes MMS proceedings to recover past-due royalties as "administrative actions."[8] The Department cannot seriously dispute that the term "action" encompasses administrative proceedings when the Department itself refers to its proceedings as "actions."

2. Nor does Section 2415(a)'s use of the word "complaint" confine its effect to judicial proceedings. To the contrary, the term "complaint" is widely used to describe the instrument that initiates proceedings before an administrative agency (and that, if left unanswered, will result in liability). See, *e.g.*, *Ohio Civil Rights Comm'n* v. *Dayton Christian Sch., Inc.*, 477 U.S. 619, 624 (1986) ("When Dayton failed to respond, the Commission initiated administrative proceedings against it by filing a complaint."); *Andrus* v. *Shell Oil Co.*, 446 U.S. 657, 660 (1980) ("[T]he Department issued administrative complaints alleging that the * * * claims were invalid.").

Congress regularly uses the term "complaint" to refer to any instrument that commences adversarial or quasi-judicial processes before an agency. The Federal Trade Commission Act, for example, provides:

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and Trademark Off.) (defining "legal proceeding" to include all "judicial or administrative actions"); 38 C.F.R. § 14.802(d) (Dep't of Veterans Affairs) (same); 45 C.F.R. § 1201.1(b) (Corp. for Nat'l & Cmty. Serv.) (defining "litigation" as encompassing "all judicial or administrative actions"); 39 C.F.R. § 265.13(c)(13) (United States Postal Serv.) (defining "[t]hird-party action" to include "an action, judicial or administrative").

[8] See, *e.g.*, *Navajo Refining Co.*, 147 IBLA 253, 256 (1999) ("This is an administrative *action* initiated after completion of a contract reconciliation which found that the account had a balance due.") (emphasis added); *W.A. Moncrief, Jr.*, 144 IBLA 13, 15 (1998) ("[A] Departmental proceeding requiring payments that accrued more than 6 years before the proceeding was initiated 'is not an action for money damages * * *, but rather is administrative *action* not subject to the statute of limitations.'") (quoting *Alaska Statebank*, 111 IBLA 300, 311 (1989)) (emphasis added); *Andarko Petroleum Corp.*, 122 IBLA 141, 147 (1992) (same).

> Whenever the Commission shall have reason to believe that any such person * * * is using any unfair method of competition * * * , and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person * * * a *complaint* stating its charges in that respect and containing a notice of a hearing * * * .

15 U.S.C. § 45(b) (emphasis added). A raft of other statutes also use the word "complaint" in that fashion.[9]

Administrative usage is similar. For example, the Federal Labor Relations Authority and the National Labor Relations Board both file a "complaint" to commence unfair labor practice proceedings. See, *e.g.*, 5 C.F.R. § 2423.20(a) (FLRA); 29 C.F.R. § 102.15 (NLRB). A wealth of other regulations likewise use the word "complaint" to refer to the instrument that begins administrative proceedings.[10]

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[9] 29 U.S.C. § 160(b) (National Labor Relations Act provision allowing the NLRB to issue a "complaint" to persons engaging in unfair labor practices); 25 U.S.C. § 2713(a)(3) (Indian Gaming Regulatory Act provision requiring agency to provide tribal operators or management contractors with a "complaint" for certain violations); 15 U.S.C. § 522 (allowing the Secretary of Commerce to issue a "complaint" for monopoly in the fishing industry); 19 U.S.C. § 1337(b)(1) (Tariff Act of 1930 provision allowing agency to investigate violations "on complaint").

[10] 9 C.F.R. § 202.103(a) (Dep't of Agric.) (reparation proceeding under the Packers and Stockyards Act "is begun by filing a complaint"); 10 C.F.R. § 76.7(b) (Nuclear Reg. Comm'n) (declaring that an "administrative proceeding" alleging discrimination for engaging in protected activities "must be initiated * * * by filing a complaint"); 16 C.F.R. § 3.11(a) (FTC) (stating that "an adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint"); 17 C.F.R. § 10.21 (Commodity Futures Trading Comm'n) (declaring that "an adjudicatory proceeding is commenced when a complaint and notice of hearing is filed with the Office of Proceedings"); 20 C.F.R. § 901.35(a) (Joint Bd. for the Enrollment of Actuaries) (stating requirements for a "complaint initiating a suspension or termination proceeding"); 24 C.F.R. § 103.204(a) (Dep't of Hous. and Urban Dev.) (allowing Assistant Secretary to file a "complaint" based on information

Indeed, notwithstanding its position here, the Department of Justice defines the term "adjudicatory proceeding" in part as "an *administrative* judicial-type proceeding * * * *commencing with the filing of a complaint.*" 28 C.F.R. § 68.2 (emphasis added).

Against that backdrop, Congress's use of the word "complaint" in Section 2415(a) cannot be construed to limit the six-year limitations period to judicial, as opposed to administrative, actions. To the contrary, that term encompasses any written instrument that provides notice and commences proceedings, no matter how it is denominated. As various agencies acknowledge, the word "[c]omplaint" in administrative practice "means *any document* initiating an adjudicatory proceeding, *whether designated a complaint or an order* for proceeding *or otherwise.*" 17 C.F.R. § 10.2(f) (emphasis added); see 7 C.F.R. § 1.132 ("Complaint means the formal complaint * * * or other document by virtue of which a proceeding is instituted.").[11]

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that a discriminatory housing practice has occurred); 29 C.F.R. § 458.66(c) (Dep't of Labor) (proceedings to enforce standards of conduct shall be instituted by the "filing [of] a complaint"); 32 C.F.R. Pt. 277 app. at G. (Dep't of Defense) (implementing Program Fraud Civil Remedies Act and discussing the requirements for issuance of an administrative "complaint"); 33 C.F.R. § 20.401 (Coast Guard) (stating that an "administrative proceeding commences when the Coast Guard representative files the complaint"); 39 C.F.R. §952.5 (United States Postal Serv.) (requiring General Counsel to "prepare and file * * * a complaint" to commence proceedings for false representation); 40 C.F.R. § 22.13(a) (Envtl. Prot. Agency) (administrative proceedings for civil penalties and the revocation, termination or suspension of permits are "commenced by filing * * * a complaint"); 41 C.F.R. § 60-30.5(a) (Dep't of Labor) (administrative proceedings to enforce equal opportunity requirements are instituted by the "filing [of] a complaint").

[11] The D.C. Circuit conceded that "some statutes provide for a 'complaint' that triggers administrative proceedings," but distinguished the MMS order at issue here because it was called "an *order*," and because the ensuing adjudication is denominated an "appeal" rather than the initial "adjudicative hearings on the merits." Pet. App. 17a. But that agency-specific view gives too much weight to the arbitrary labels used

3. No less significant than Congress's use of expansive terminology is Congress's decision not to use language that would limit Section 2415(a)'s application to proceedings in court. Where Congress seeks to establish a limitations period that applies solely to judicial proceedings, it ordinarily includes language specific to the judicial process. For example, some federal statutes of limitations refer to a time in which to bring "suit."[12] Others use the phrase "civil action,"

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by Interior (primarily for historic reasons) and misunderstands MMS administrative practice. An agency cannot evade the six-year limitations period simply by calling the document that commences proceedings something other than a "complaint" (or, for that matter, by calling its adjudication of the merits an "appeal"). Even in the judicial context, different jurisdictions have attached different labels to what is often now called the "complaint." At common law, for example, the complaint was called a "declaration." *Black's Law Dictionary* 356 (4th ed. 1968). In Oklahoma state practice, it is called a "petition." Okla. Stat. tit. 12, § 2003. Yet no one would contend that, notwithstanding the statute of limitations, the government could file suit in Oklahoma to recover simply because that jurisdiction uses another word to describe the complaint. As the regulations cited at pages 22-23, *supra*, make clear, the same is true for agencies: In administrative practice, "[c]omplaint means any document initiating an adjudicatory proceeding, whether designated a complaint * * * or otherwise." 17 C.F.R. § 10.2(f). Here, although denominated an "order," the MMS order to pay royalties serves precisely the function of a complaint, which is "to give defendant information of all material facts on which plaintiff relies to support his demand," *Black's Law Dictionary* 356 (4th ed. 1968), and to initiate proceedings for the recovery of royalties. Indeed, MMS regulations do not afford a lessee a hearing on the matters addressed in the order prior to the order's issuance. An "adjudicative hearings on the merits" does follow the filing of the complaint or order, Pet. App. 17a, but that is (for historic reasons) called an "appeal." See 30 C.F.R. § 290.100, *et seq.*

[12] See, *e.g.*, 15 U.S.C. § 714b(c) (provision of the Commodity Credit Corporation Charter Act imposing a six-year statute of limitations for any "suit by or against the Corporation"); 38 U.S.C. § 1984(b) (provision relating to veterans' insurance benefits setting six-year statute of limitations on any "suit"); 43 U.S.C. § 900 (six-year statute of limitations for "[s]uits by the United States to vacate and annul any patent to lands erroneously issued under a railroad or wagon-road grant"); 43 U.S.C.

the same phrase the Federal Rules of Civil Procedure employ to refer to cases filed in court.[13] And a large number of statutes of limitations expressly confine themselves to lawsuits by making the limitation period applicable to suits "in the district court of the United States" or a "court of competent jurisdiction."[14]

Congress did not limit the reach of Section 2415(a) to "judicial actions," "court actions," or suits in a "court of

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§ 1166 (six-year statute of limitations for "[s]uits by the United States to vacate and annul any patent").

[13] See, *e.g.*, 15 U.S.C. § 3006(c) (Interstate Horseracing Act provision setting a three-year limit on any "civil action"); 17 U.S.C. § 507(b) (Copyright Act provision establishing a three-year limitations period for "civil action[s]"); 28 U.S.C. § 2409a(g) (Quiet Title Act provision setting a 12-year limitations period for "[a]ny civil action under this section"); 31 U.S.C. § 3731(b) (False Claims Act limit applicable to "civil action[s]"); 49 U.S.C. § 15905(a) (three-year limitations period for any "civil action to recover charges for transportation or service provided by the carrier").

[14] See, *e.g.*, 5 U.S.C. § 552a(g)(5) (Privacy Act of 1974 provision allowing "[a]n action to enforce any liability" to be brought "in the district court of the United States" within two years); 12 U.S.C. § 1831d(b) (Federal Deposit Insurance Act provision allowing a person who is overcharged interest to recover in "a civil action commenced in a court of appropriate jurisdiction" within two years); 12 U.S.C. § 2614 (Real Estate Settlement Procedures Act of 1974 provision allowing certain "action[s]" to be brought "in the United States district court" within various lengths of time); 15 U.S.C. § 1640(e) (Truth in Lending Act provision allowing "action[s]" against creditors who fail to comply with certain requirements to be brought "in any United States district court" within one year); 15 U.S.C. § 1681p (Fair Credit Reporting Act provision allowing "[a]n action to enforce any liability" under the Act to "be brought in any appropriate United States district court" within five years of the violation or two years of its discovery); 18 U.S.C. § 5408(a) (Fastener Quality Act provision setting a 10-year limitations period for bringing "an action in an appropriate United States district court"); 42 U.S.C. § 3613(a)(1)(A) (Fair Housing Act provision allowing for enforcement by private persons through "a civil action in an appropriate United States district court" within two years of the violation); 42 U.S.C. § 4053 (provision relating to national flood insurance setting a one-year limitations period for instituting an "action" "in the United States district court" against an insurer that refuses a claim).

competent jurisdiction." To the contrary, it enacted a statute that applies to "*every* action." As the Tenth Circuit observed, that language is "patently broad." *OXY USA*, 268 F.3d at 1005. And it is certainly broad enough to encompass judicial actions and administrative actions alike. Even if that were not clear from Congress's use of expansive language like "every action," any ambiguity is eliminated by the remaining canons of statutory construction.

B. Excluding Administrative Proceedings From Section 2415's Scope Would Render An Entire Provision Of The Statute Superfluous

1. Reading Section 2415 as applicable only to judicial actions would also violate the "'cardinal principle of statutory construction' that 'a statute ought * * * to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)). As amended, Section 2415 contains a limited exception for a specific category of administrative actions—administrative offsets. Through such offsets, the United States can collect a debt by withholding money the United States would otherwise pay.[15]

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[15] "Administrative offset" is defined as an agency "withholding funds payable by the United States * * * to, or held by the United States for, a person to satisfy a claim." 31 U.S.C. § 3701(a)(1). The Federal Claims Collection Standards ("FCCS"), currently promulgated jointly by the Department of the Treasury and the Department of Justice at 31 C.F.R. § 900, *et seq.*, exemplify the administrative offset procedure. The FCCS first requires an agency to notify the debtor of the "type and amount of the debt" and its "intention * * * to use administrative offset to collect the debt." *Id.* § 901.3(4)(ii)(A). The debtor must then be given an opportunity "to inspect and copy agency records related to the debt," to obtain "review within the agency of the determination of indebtedness," and "to make a written agreement to repay the debt." *Id.* § 901.3(4)(B)(1)-(3). Once a debt is 180 days delinquent, however, the agency is required to refer the debt to the Secretary of the Treasury for collection. *Id.* § 901.3(b)(1). The Department of Treasury then cross-references the taxpayer identification number ("TIN") of the debtor with the list of

Section 2415(i) in particular provides that the general six-year statute of limitations "shall not prevent the United States or an officer or agency thereof from collecting any claim of the United States *by means of administrative offset*, in accordance with section 3716 of title 31." 28 U.S.C. § 2415(i) (emphasis added).

If Section 2415(a) did not by its terms encompass administrative actions as well as suits in court, then Subsection (i)'s express exception for administrative offsets would serve no purpose whatsoever. See *OXY USA*, 268 F.3d at 1006; *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052, 1055 (Fed. Cir. 1996). Because it is the duty of every court to "give effect, if possible, to every clause and word of a statute," *United States* v. *Menasche*, 348 U.S. 528, 538-539 (1955) (internal quotation marks omitted), it is generally inappropriate to construe a statute so as to render an *entire provision* mere surplusage. This Court regularly declines to read a statutory provision so as to render an express exception "wholly superfluous." *TRW*, 534 U.S. at 31 (quoting *Duncan*, 533 U.S. at 174). Yet that is precisely what the D.C. Circuit's construction does here.

2. The court of appeals agreed that the superfluity principle was "not without force" here. Pet. App. 18a. Nonetheless, that court thought contravention of the principle tolerable in these circumstances, primarily because Subsection (i) was "added more than 16 years after the passage of the original Act" in the context of the Debt Collection Act of 1982. Pet. App. 17a, 18a. But the rule against rendering a statutory provision superfluous is at its apex where the provision is added by amendment. See *Stone* v. *INS*, 514 U.S. 386, 397 (1995). "When Congress acts to amend a statute," the Court "presume[s] it intends its amendment to have a real and substantial effect." *Ibid.* Contrary to the

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payments to be made by the government. *Id.* § 901.3(b)(2). "When the name and TIN of a debtor match the name and TIN of a payee * * * the payment will be offset to satisfy the debt." *Ibid.*

D.C. Circuit's suggestion, moreover, the legislative history of Subsection (i) confirms that Subsection (i) should not be rendered mere surplusage.

The Debt Collection Act was designed "[t]o increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." Pub. L. No. 97-365, 96 Stat. 1749. To that end, the Debt Collection Act anticipated expansive use of the administrative offset procedure, and Section 10 set forth new guidelines and procedures for its use. 96 Stat. 1754-1755. Before the Debt Collection Act's passage, however, "[a] Justice Department ruling * * * prevent[ed] agencies from using" an "administrative offset beyond the six year statute of limitations" in Section 2415(a). *Collection of Debts Owed the United States: Hearings on H.R. 4614 Before the Subcomm. on Admin. Law and Gov't Relations of the H. Comm. on the Judiciary*, 97th Cong., 2d Sess. 16 (1982) (statement of Joseph R. Wright, Jr., Deputy Dir. Off. of Management and Budget). In particular, the Office of Legal Counsel had ruled that government agencies cannot "collect by 'administrative offset' Government claims, which cannot be pursued in court because of a statute of limitations." *Effect of Statute of Limitations on Administrative Collection of United States Claims*, Mem. Op. Off. Legal Counsel 1 (Sept. 29, 1978).[16] The opinion noted that, at the time, Section 2415(f) provided the only "exception to the general rule that the Government cannot bring an action on a time-barred debt." *Id.* at 5. Under Subsection (f), the United States could assert an otherwise time-barred claim as a counterclaim or by way of offset, but only in response to "an action against the United States" brought by the debtor. 28 U.S.C. § 2415(f). After evaluating that exception, the Office

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[16] Although cited in the legislative record, the Office of Legal Counsel opinion appears to be unpublished. Consistent with this Court's Rule 32.3, petitioners will lodge a copy with the Court upon request.

of Legal Counsel concluded that it was "clear that the Government may not administratively collect a time-barred debt by withholding money from a designated payee," unless that payee has "prevailed on a claim against the United States." Mem. Op. Off. of Legal Counsel, *supra*, at 6.

The Office of Legal Counsel urged that a contrary reading would also be at odds with the statutory structure and purpose. First, the exception contained in Section 2415(f) rested on the notion that, "[b]y initiating the claim the [plaintiff] embroils himself in a controversy against the United States." Mem. Op. Off. of Legal Counsel, *supra*, at 7. Having chosen to "embroil" himself in that controversy, the plaintiff cannot complain if the *entire* controversy is adjudicated. *Ibid.* Accordingly, Section 2415(f) permits the United States to assert otherwise barred counterclaims if they arise from the same transaction as the plaintiff's suit. In addition, by embroiling himself in a lawsuit with the United States, the plaintiff exposes himself to the possibility of an "offset" for claims from unrelated transactions, but only "in an amount not to exceed the amount of the [plaintiff's] recovery." 28 U.S.C. § 2415(f). Allowing the government to recover the full amount of its claim absent a suit against it, the Office explained, was inconsistent with those narrow exceptions. Mem. Op. Off. of Legal Counsel, *supra*, at 7. Indeed, "if the United States could *administratively* collect time-barred debts where no claim were filed against it, this would result in a completely ineffective statute of limitations," and "the repose intended by § 2415 would be illusory." *Ibid.*

Because the Comptroller disagreed with the Office of Legal Counsel's view,[17] Congress eventually enacted Sec-

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[17] The Comptroller General urged that statutes of limitation "run only against the remedy" and "do not discharge the debt." *In the Matter of Collection of Debts—Statute of Limitations on Administrative Offset*, 58 Comp. Gen. 501, 504-505 (1979). In the Comptroller's view, "the government has the right to collect the indebtedness of its employees by means of setoff against monies owed to the employee even if direct

tions 9 and 10 of the Debt Collection Act to resolve the dispute. Section 9 created Subsection (i) to exempt administrative offsets from Section 2415's scope. 96 Stat. at 1754. At the same time, Section 10 established a separate 10-year limitations period to govern administrative offsets. 96 Stat. at 1754, codified at 31 U.S.C. § 3716(e)(1). In so amending the statute, however, Congress necessarily clarified the implications of Section 2415(a) for administrative actions more generally. The "classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute." *United States* v. *Fausto*, 484 U.S. 439, 453 (1988). Once statutes have been amended, they must "be read, as to all subsequent occurrences, as if they had originally been in the amended form." *United States* v. *LaFranca*, 282 U.S. 568, 576 (1931). Here, Congress established a solitary exception for certain administrative actions—administrative offsets—but no others. In so doing, Congress made clear that administrative actions within the exception would be exempted from the limitations period, but actions outside the exception would be covered.

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action to collect the debt would be barred by the statute of limitations." *Id.* at 507. The Comptroller General's position was also contrary to the Joint Committee on Taxation, which summarized the "present law" as follows in its report to Congress: "*Statute of Limitations for Federal Debt Collection.* In general, there is a six-year statute of limitations on Federal debt collection actions. There is no exception for Federal debts collected through administrative offset." *Hearings on S. 1249 Before the Subcomm. on Oversight of the IRS of the S. Comm. on Finance*, 97th Cong., 1st Sess. 24 (1981) (statement of the staff of the Joint Comm. on Taxation). The Comptroller General recommended that Congress enact Subsection (i) "as a means of resolving the differences." *Debt Collection Act of 1981: Hearings on S. 1249 before the Senate Committee on Governmental Affairs*, 97th Cong., 1st Sess. 83 (1981) (statement of Milton J. Socolar, Acting Comptroller General).

C. The D.C. Circuit's Construction Is Inconsistent With The Statutory Structure And Upsets The Coherence Of The Statutory Scheme

Where possible, this Court must "interpret [a] statute as a symmetrical and coherent regulatory scheme * * * and fit, if possible, all parts into an harmonious whole." *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal quotation marks omitted). The D.C. Circuit's crabbed construction of Section 2415 is inconsistent with the symmetry and coherence of this statutory scheme in three distinct respects.

1. *First*, that construction creates unexplained and irrational gaps in the statute. When Congress established the limitations periods in Section 2415, it carefully selected different periods for different types of government claims—*e.g.*, three years for cases arising in tort, and six years for actions for money damages founded on contract. At the same time, Congress also established more liberal rules to govern the government's right to assert claims defensively to minimize its liability in litigation, and administratively (absent litigation) to avoid paying money otherwise due. When the government asserts an administrative offset to avoid paying money, that offset is subject to a more lenient 10-year limitations period. 31 U.S.C. § 3716(e)(1). When a private party initiates an action *against* the government, Section 2415(f) allows the government to assert an offset—including one that would otherwise be time-barred—up to the amount of the plaintiff's recovery. See 28 U.S.C. § 2415(f); p. 5, *supra*.

Construing Section 2415 to exempt administrative actions to recover money damages from any limitations period defies the logic of that scheme. Under that construction, *judicial* actions to *extract* money are subject to a limitations period; *administrative* actions to *withhold* money are subject to a slightly longer one; but *administrative* actions to *extract* money are inexplicably permitted in perpetuity. There is simply no reason why Congress would have intend-

ed such a gaping hole in the statutory structure. Moreover, there is no logical reason why Congress would have wanted to treat offensive efforts to *coerce* payment from the debtor more favorably than the withholding of payment to the debtor. That is contrary to the pattern established in Section 2415, which treats government offsets and claims in *response* to private demands for payment more favorably than the government's affirmative efforts to coerce payment. See 28 U.S.C. § 2415(f) (allowing the assertion of an offset where the government is sued, even if the offset would be barred in an action by the government).

2. *Second*, the D.C. Circuit's exclusion of administrative proceedings from Section 2415(a)'s six-year limitations period also scuttles the congruence that Congress established between the limitations period and the statutory record-retention period for oil and gas lessees. As part of the Federal Oil and Gas Management Act of 1982, Pub. L. 97-451, Jan. 12, 1983, 96 Stat. 2447, codified as amended at 30 U.S.C. § 1701, *et seq.*, Congress required lessees of federal and Indian mineral, oil, and gas properties to "establish and maintain any records, make any reports, and provide any information that the Secretary may * * * reasonably require for the purposes of implementing this chapter or determining compliance with rules or orders under this chapter." 30 U.S.C. § 1713(a). The statute specifically requires that such records "shall be maintained for 6 years after the records are generated," 30 U.S.C. § 1713(b)—the limitations period in Section 2415(a).

When Congress prospectively extended the statute of limitations to seven years for any "judicial proceeding or demand" relating to a federal oil and gas lease as part of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 ("FOGRSFA"), Pub. L. 104-185, 110 Stat. 1700, codified at 30 U.S.C. § 1724(b), Congress retained that congruity: It simultaneously amended the recordkeeping requirement to mandate the retention of records for "the same period of time during which a judicial proceeding or

demand may be commenced under * * * this section." 30 U.S.C. § 1724(f). The reasons for linking the record-retention period with the limitations period are obvious—it ensures that the government will have access to the records it may need to establish its claims, and that lessees will have the records they need to defend against any unfounded claims, for so long as such claims may be pursued.

The D.C. Circuit's construction destroys that congruity, allowing the United States to bring administrative actions long after the six-year record-retention requirement has lapsed—indeed, in perpetuity. Lessees that tied their record-retention policies to the six-year period may have long since destroyed the documents relating to pre-1996 royalty payments, and thus can neither substantiate nor refute any MMS claims for payment that may be brought through administrative proceedings. Conversely, any lessees that may still hold records relating to pre-1996 royalty payments may feel obligated to maintain those records indefinitely, for fear that they may need to defend themselves in administrative proceedings years in the future. That is directly contrary to one of Section 2415's purposes, which is to relieve the enormous record-keeping burden that might otherwise run in perpetuity. See pp. 37-38, *infra*. And it upsets the harmony of the statutory scheme, creating exactly the situation Congress sought to avoid when it (on two separate occasions) calibrated the record-retention requirements to the statute of limitations.

3. *Third*, and finally, the D.C. Circuit's exclusion of administrative proceedings from Section 2415(a) also destroys the symmetry that Congress intended to bring to government contract disputes. As this Court has recognized, Section 2415 is "a statute aimed at equalizing the litigative opportunities between the Government and private parties." *Crown Coat Front Co.* v. *United States*, 386 U.S. 503, 521 (1967). Time and again, Congress made clear that Section 2415 was intended to place the government on (mostly) equal footing with private parties by making the

six-year limitations period for private lawsuits applicable to actions brought by the government. There is simply no reason to have two different limitation periods for government and private claims that are "almost indistinguishable from" each other. Sen. Rep. No. 1328, *supra*, at 2; see p. 4, *supra*.

The D.C. Circuit's construction would destroy the symmetry of treatment that Section 2415 seeks to establish. By virtue of Section 2415(a), government contract claims are subject to a six-year limitations period that matches the six-year period that, under 28 U.S.C. § 2401, is applicable to private contract claims against the government. That period also matches the limit imposed by the Contract Disputes Act, which provides that every "claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim." 41 U.S.C. § 605(a).[18] Under the D.C. Circuit's construction, however, administrative actions to recover money damages founded on contract would be uniquely excluded from any limitations period at all, allowing agencies to bring such actions at *any* point in the future, long after a private party's action on the same contract has been barred. That asymmetry—providing infinite time for government administrative contract actions against private parties, but only six years for private parties to seek recovery on the same agreement—is wholly at odds with the principle of "equality of treatment" Congress thought compelled by "modern standards of fairness." Sen. Rep. No. 1328, *supra*, at 2.

4. By contrast, reading Section 2415 consistent with its text to apply to "every action" to recover damages founded on contract—administrative or otherwise—avoids all of those disruptions to the statutory scheme. Only that con-

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[18] The Contract Disputes Act applies to certain categories of contracts but does not cover federal oil and gas leases. See 41 U.S.C. § 602(a).

struction avoids otherwise inexplicable gaps in the statutory coverage. Only that construction preserves the congruence between record-retention requirements and the life span of potential contractual liability. And only that construction ensures the parity of treatment for government and private claims that Congress sought to achieve. In short, only that construction is consistent with the obligation to "fit, if possible, all parts [of the statutory scheme] into an harmonious whole." *Brown & Williamson*, 529 U.S. at 133.

D. The D.C. Circuit's Construction Destroys Section 2415's Fundamental Purposes

Ultimately, construing Section 2415 to exempt administrative actions seeking money damages under a contract from *any* limitations period is inconsistent not merely with the statutory text. It is also at war with the statute's purpose. It leads to absurd results, saddling private individuals acting in good faith with liability for both principal and decades of accumulated interest obligations on otherwise time-barred debts.

1. The fundamental principle underlying any statute of limitations is that, after some period of time, individuals are entitled to repose. See *Wood* v. *Carpenter*, 101 U.S. 135, 139 (1879) (statutes of limitations "promote repose by giving security and stability to human affairs"). Indeed, one of the guiding principles behind Section 2415 was that, "as a matter of fairness, persons dealing with the Government should have some protection against an action by the Government when the act occurred many years previously." Sen. Rep. No. 1328, *supra*, at 11-12. As then-Assistant Attorney General Douglas explained:

> As a general proposition, potential defendants are entitled eventually to put to one side thoughts of possible suits against them. At some point, and with some exceptions, bygones should be bygones. This thesis underlies the statute of limitations applicable to

> private parties. It should apply with equal force to suits brought by the Government.

Hearing on H.R. 13652 Before Subcomm. No. 2 of the H. Comm. on the Judiciary, 89th Cong., 2d Sess. 7 (1966) (statement of John W. Douglas, Assistant Attorney General). In short, like this Court before it, Congress recognized that allowing "actions for debt" to "be brought at any distance of time" is "utterly repugnant to the genius of our laws. In a country where not even [serious crimes] can be prosecuted after a lapse of * * * years, it could scarcely be supposed that an individual would remain forever liable to a pecuniary forfeiture." *Adams* v. *Woods*, 6 U.S. (2 Cranch) 336, 342 (1805).

The D.C. Circuit's construction creates precisely the eternal liability that is both "repugnant to our laws" and to the policies of repose and fairness that formed "the principal basis of" Section 2415. H.R. Rep. No. 1534, 89th Cong., 2d Sess. 8 (1966). Under that construction, an agency could allow the limitations period to run, but nonetheless proceed against a party administratively at any point in perpetuity.[19]

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[19] Section 2415(a), which is applicable to "every action for money damages" "*founded upon any contract*" unless "otherwise provided by Congress," 28 U.S.C. § 2415(a), was clearly intended to serve as a "catch-all" limitations period that relieved Congress of the need to enact a specific limitations period for each type of action that an agency might conceivably bring. Congress has enacted several such "catch-all" statutes of limitations in other contexts to ensure that no type or cause of action slips through the cracks. See, *e.g.*, 18 U.S.C. § 3282(a) ("Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found * * * within five years next after such offense shall have been committed."); 28 U.S.C. § 1658(a) ("Except as otherwise provided by law, a civil action arising under an Act of Congress * * * may not be commenced later than 4 years after the cause of action accrues."); *id.* § 2462 ("Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued * * * .").

The knowledge that one is immune from an action in court is of little consolation to the individual who must worry about being subjected to administrative actions forever. And barring a damages action in court on stale claims hardly promotes fairness if the individual is still subject to identical liability before the administrative agency. "Bygones" can never "be bygones" when the potential for administrative liability forever persists.

The Office of Legal Counsel identified precisely that defect when it rejected the notion of perpetual administrative claims under this statute more than two decades ago: "[I]f the United States could administratively collect time-barred debts where no claim were filed against it," the Office observed, "this would result in a completely ineffective statute of limitations" and "the repose intended by § 2415 would be illusory." Mem. Op. Off. of Legal Counsel, *supra*, at 7-8. "There is a strong presumption against construing a statute so as to render it ineffective." *Ibid.* As a result, the Office of Legal Counsel concluded that Section 2415 "must be interpreted as precluding" *all* actions for the "collection of time-barred debts." *Id.* at 8. For the same reasons, this Court should so conclude as well.

2. The D.C. Circuit's construction also undermines each of the other "salutary" goals that Section 2415 was intended to achieve. First, Section 2415 was designed to ensure that any adjudication would occur at a time when "necessary witnesses, documents, and other evidence are still available," and the memories of "witnesses are better." Sen. Rep. No. 1328, *supra*, at 2. If the United States may bring administrative actions to recover on its contracts at any time, however, nothing would prevent it from pursuing claims long after critical documents have disappeared and witnesses' memories have faded.

The D.C. Circuit's construction cuts a giant hole in Section 2415(a), converting it from a "catch all" into a "catch little."

Section 2415 was also enacted to eliminate the burden of preserving "records" in perpetuity "on the assumption that they will be required" in connection with a claim in the distant future. Sen. Rep. No. 1328, *supra*, at 2. But the D.C. Circuit's construction destroys that purpose as well. Confronted with the possible need to pursue or defend against aged claims in administrative actions, government agencies and private parties respectively will have to retain documents long after any statutory retention period has lapsed. And the goals of enhancing governmental efficiency and prompt pursuit of claims, *id.* at 12, would be lost as well. There is little pressure for an agency to pursue claims promptly in court when administrative remedies always stand ready. This Court ought not "construe [the statute of limitations] so as to defeat its obvious purpose, which is to encourage the prompt presentation of claims." *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979).

3. The unfairness to private parties that results from excluding administrative proceedings from the six-year limitations period in Section 2415(a) would be troubling in almost any context. Here, however, it is compounded by the fact that the agency may be entitled, and in many cases required, to collect interest on its claim.

The MLA, for example, requires MMS to charge interest "where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due." 30 U.S.C. § 1721(a). That interest, moreover, is not calculated at a lenient rate. Instead, MMS must use the Internal Revenue Code formula for underpaid taxes, see 30 U.S.C. § 1721(a), which is "the Federal short-term rate" *plus* "3 percentage points," 26 U.S.C. § 6621(a)(2).[20] The D.C. Circuit's decision thus would allow MMS to wait indefinitely while interest charges pile up against the

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[20] The federal short-term rate is "the average market yield * * * on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less." 26 U.S.C. § 1274(d)(1)(C)(i).

lessee, eventually dwarfing the original obligation.[21] That does not merely result in inequity. It also perverts the incentives that limitations periods are supposed to establish, making older claims (with more interest) more valuable to the government than more timely ones. And since liability is perpetual, claims for centuries of accumulated interest are hardly unthinkable. Just last Term, the United States urged this Court to reinstate an award of $211 million in prejudgment interest following a 204-year delay in filing suit. See *Cayuga Indian Nation* v. *Pataki*, 165 F. Supp. 2d 266 (N.D.N.Y. 2001) (awarding $211 million in interest for a 204 year delay, *after* a 60 percent reduction), rev'd 413 F.2d 266 (2d Cir. 2005), cert. denied, 126 S.Ct. 2022 (2006).

4. Worse still, such liability could be imposed years after the fact without wrongdoing or negligence. Under the MLA, courts generally defer to MMS's construction of the terms of a lease agreement, as the D.C. Circuit did in this case. Pet. App. 7a-8a. While agencies may not ordinarily change the lease's meaning retroactively, cf. *Bowen* v. *Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988), decisions "clarifying an unsettled or confusing area of the law" may be given retroactive application, *Pope* v. *Shalala*, 998 F.2d 473, 483 (7th Cir. 1993); see also *Heimmermann* v. *First Union Mortgage Corp.*, 305 F.3d 1257, 1260 (11th Cir. 2002); *Orr* v. *Hawk*, 156 F.3d 651, 654 (6th Cir. 1998).

As a result, a party to a lease agreement might make payments in good faith under a perfectly reasonable con-

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[21] In a dispute between private parties, the equitable defense of laches could be invoked. *Chapman* v. *Bd. of County Comm'rs*, 107 U.S. 348, 355 (1883); see also *Nat'l R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 121-122 (2002). But the federal government is not subject to the defense of laches. See *United States* v. *Summerlin*, 310 U.S. 414, 416 (1940). In this case, the Department of the Interior specifically rejected ARCO/Vastar's argument that "it would be inequitable to assess late payment interest on royalties due based on a valuation procedure that could not have been anticipated by lessees." Pet. App. 124a.

struction of the lease for years or even decades on end, only to have the agency (as here) "clarify" that more money is due because the methodology was wrong. A statute of limitations helps mitigate any potential unfairness by confining any resulting liability to a finite period. If no statute of limitations exists, however, an agency can effectively "clarify" the rules of the game and seek retroactive payments for decades or centuries of supposed "noncompliance" with the newly clarified rule—plus interest. This Court should not construe Section 2415(a) to "permit plaintiffs who know of the defendant's pattern of activity simply to wait, 'sleeping on their rights,' * * * as the pattern continues and [additional damages] accumulate, perhaps bringing suit only long after the 'memories of witnesses have faded or evidence is lost.'" *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 187 (1997) (quoting *Wilson* v. *Garcia*, 471 U.S. 261, 271 (1985)). Such "absurd results are to be avoided," especially where, as here, "alternative interpretations consistent with the legislative purpose are available." *Griffin* v. *Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

II. Excluding Administrative Proceedings From The Six-Year Limitations Period Is Contrary To Section 2415's Origins And History

A. Section 2415 Was Enacted To Address Administrative Processes

Section 2415's origins also belie the claim that it was designed to address only judicial claims. To the contrary, it was the potential abuse of *administrative* processes that led to Section 2415's enactment. As noted above, before 1966, there was no general statute of limitations governing actions brought by the United States against private parties seeking money under a contract. See Sen. Rep. No. 1328, *supra*, at 11-12. The need for a limitations period became evident during the 1965 hearings on the Comptroller General's government-contracts auditing procedures. See generally *Comptroller General Reports to Congress on Audits of*

Defense Contracts: Hearings Before a Subcomm. of the H. Comm. on Gov't Ops., 89th Cong., 1st Sess. (1965) ("Defense Contractor Hearings"); Sen. Rep. No. 1328, *supra*, at 7 (citing the hearings). Those hearings addressed the Defense Department's and the General Accounting Office's use of two *administrative* procedures to recover money from government contractors: "voluntary refunds" and "unilateral" after-the-fact "price adjustments."[22]

Recognizing the unfairness of allowing such administrative recoveries decades after the fact, Representative Frank J. Horton asked "what statutes of limitations, if any, are applicable" to requests for voluntary refunds and use of the downward price adjustment procedure. Defense Contractor Hearings, *supra*, at 27. A Department of Defense lawyer responded that, "as far as administrative action is concerned," he did not believe the government "would be limited by any statute of limitations." *Id.* at 28. Representative Horton responded:

> It seems to me that the Government should have some sort of a burden placed on it so that it has to get in and examine this fairly soon after the contract is completed. And also that the contractor is entitled to know that he is at liberty at some point to at least go ahead and plan to utilize the profit that he has made

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[22] The "voluntary refund" procedure was "recommended" to agencies by the General Accounting Office. Defense Contractor Hearings, *supra*, at 7 (statement of Paul R. Ignatius, Ass't Sec'y of Defense). The "voluntary refund" procedure allowed an agency to request that a contractor repay a portion of the contract proceeds whenever the government determined, after the fact, that the contract price had included "'unnecessary,' 'excessive,' or 'unwarranted' costs." *Ibid.* The unilateral price adjustment procedure, provided in Section (e) of the Act of September 10, 1962, Pub. L. No. 87-653, 76 Stat. 528, codified as amended at 10 U.S.C. § 2306a(c), mandated that government contracts contain a clause requiring "the head of the agency" unilaterally to adjust the price of a contract downward if the agency determined that the contractor had "furnished cost or pricing data which * * * was inaccurate, incomplete, or noncurrent."

> and not have to keep on his books some sort of reserve to cover these contingencies.

Ibid.

The ensuing report of the Government Operations Committee declared that one "issue which demands corrective action * * * is the lack of a cutoff date for contractor liabilities." H.R. Rep. No. 1344, 89th Cong., 2d Sess. 16 (1966). The Committee observed that "contractors have no certainty that contracts 10 or 20 years old will not be subjected to renewed scrutiny or revision, with possible demands for refunds to the Government." *Ibid.* The Committee concluded "that there is general agreement that, in the interest of fairness, *a statute of limitations on matters related to audit and recoveries arising out of Government contracts* would be in order." *Ibid.* (emphasis added). The Committee recommended that the Department of Defense and the Department of Justice consult with the GAO and adopt recommendations for a statute of limitations "with the objective that a fair procedure be adopted and that contracts be closed out after a finite period." *Ibid.*

The Comptroller General and the Department of Justice ultimately responded by proposing H.R. 13652, which was enacted and then codified as Section 2415. The Senate Report explained that the bill "proposed that statutes of limitations be applied to important general areas where none are now in effect." Sen. Rep. No. 1328, *supra*, at 12. Specifically, the bill imposed "a 6-year limitation on the assertion of Government claims for money arising out of an express or implied contract or quasi-contract." *Ibid.*

Given that Section 2415 was proposed in response to potential abuses and delays in bringing administrative proceedings, it would be the height of irony to construe Section 2415 as exempting administrative proceedings from its scope. Surely a statute should not be read as inapplicable to the very abuses it was designed to correct. Each of the factors the House and Senate Reports cite in support of

Section 2415's enactment—fairness, ensuring the availability of evidence, and limiting record-keeping burdens, see pp. 4-5, *supra*—apply with as much force to administrative actions as to judicial actions. So too does the text of Section 2415 itself.

B. The Exclusion Of Administrative Actions From Section 2415(a) Undermines Congress's Purpose In Establishing A Tolling Provision

Section 2415(a) undoubtedly restricts the time in which the government can file a lawsuit to six years. It also provides an exception where "administrative proceedings [are] required by contract or law." 28 U.S.C. § 2415(a). In that case, the government must bring suit "within one year after final decisions have been rendered" in the administrative proceedings. *Ibid.* The D.C. Circuit's interpretation would cause that exception to swallow the rule, effectively eliminating any limitations period even as to judicial actions: Any time administrative proceedings are *mandatory*, the government would have forever to begin those proceedings, *plus* a year from their completion to file a lawsuit. That result is directly contrary to the "elementary rule of construction that '[an] act cannot be held to destroy itself.'" *Citizens Bank of Md.* v. *Strumpf*, 516 U.S. 16, 20 (1995) (quoting *Tex. & Pac. R.R. Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, 446 (1907)).[23]

The legislative history is clear that, far from seeking to establish an infinite limitations period, Congress intended that exception to "toll[] the running of the statute of limitations during mandatory administrative proceedings." H.R. Rep. No. 1534, *supra*, at 4. Congress evidently understood that administrative proceedings would have to be brought within the six-year limitations period for tolling to occur. In general, to toll the limitations period for a judicial action, an administrative action must be initiated before the judicial

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[23] Here, the administrative proceedings invoked by MMS are not "required by contract or law," but rather are discretionary.

limitations period has lapsed. See, *e.g.*, *Webster* v. *Moore*, 199 F.3d 1256, 1259 (11th Cir. 2000) (holding that a state habeas petition that is filed following the expiration of AEDPA's limitations period cannot toll that period because "there is no period remaining to be tolled"). Consistent with that understanding, this Court has described the exception as "a one-year saving period to the government to overcome the effects of protracted administrative proceedings." *Crown Coat*, 386 U.S. at 521-522.

The D.C. Circuit's interpretation of Section 2415 would transform that tolling provision into a limitations period that does not begin to run until the government *chooses* to trigger it. If administrative actions are excluded from Section 2415, the government can wait any amount of time to bring an administrative action, and can delay filing suit until one year after voluntarily commencing that action and completing it. The six-year limitations period for bringing a court action is a virtual nullity if the government can evade it simply by opting to delay bringing an administrative action. This Court has long declined to "construe [a statute of limitations] as giving claimants an option as to when they will choose to start the period of limitation of an action." *McMahon* v. *United States*, 342 U.S. 25, 27 (1951). It should do likewise here.

C. Later Amendments To Section 2415 Confirm That It Addresses Administrative Actions

Subsequent amendments to Section 2415 confirm that Congress intended it to address administrative actions. As enacted in 1966, Section 2415 provided that any claims accruing in the centuries that preceded its enactment would be deemed to accrue on the date of Section 2415's enactment. As the deadline for suit approached, however, Congress repeatedly found it necessary to extend the deadline for pre-1996 claims because the Indian tribes and the Department of the Interior could not identify and pursue the claims in time. See p. 6, *supra*. Those included a significant number of claims arising from "violations of lease agree-

ments," among others. *Time Extension For Commencing Actions on Behalf of Indians: Hearing before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 92d Cong., 2d Sess. 38 (1972) (joint statement of Arthur Lazarus, Jr., Martin J. Sonosky, and Charles A. Hobbs). If the court of appeals' holding were correct, the numerous extensions enacted by Congress would have been wholly unnecessary. Any claims could have been pursued administratively in perpetuity.

The D.C. Circuit's construction is likewise inconsistent with the system Congress eventually established. Under the Indian Claims Limitation Act, claims arising before Section 2415's enactment are not barred until a specified period after the Secretary of the Interior's publication of the claim, or publication of the Secretary's decision to reject the claim. See Indian Claims Limitation Act of 1982, § 2(a), 96 Stat. 1976, codified at 28 U.S.C. § 2415(a). When the Secretary published the lists, 48 Fed. Reg. 13,698 (March 31, 1983), 48 Fed. Reg. 51,204 (Nov. 7, 1983), they included claim after claim for "breach of contract," "unpaid lease rentals," "mineral[s]," "gravel/fill/minerals/oil/gas removed" —precisely the claims that, under the D.C. Circuit's theory, could be pursued administratively in perpetuity.

III. The United States' Alternative Arguments Are Without Merit

In its response to the petition for a writ of certiorari (at 17), the government also urged that Section 2415 cannot bar MMS's effort to recover additional royalties because MMS's claim is not "founded upon a contract" and does not seek "money damages" within the meaning of 28 U.S.C. § 2415(a). The D.C. Circuit, however, did not address those arguments, and this Court ordinarily will not "decide in the first instance issues not decided below." *Nat'l Collegiate Athletic Ass'n* v. *Smith*, 525 U.S. 459, 470 (1999). In any event, the arguments are unpersuasive. MMS's demand for additional royalties is founded on the lease agreement,

which is a contract. And MMS's demand for past-due sums allegedly owed under the lease, together with interest, unquestionably constitutes a demand for "money damages."

A. The Demand For Additional Royalties Allegedly Due Under The Lease Is Founded On Contract

There can be little doubt that the government's claimed right to additional royalties is "founded on contract" within the meaning of Section 2415(a). The MLA provides that "lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary." 30 U.S.C. § 226(a). Exercising authority under that provision, the Secretary has entered into lease agreements with Amoco that set forth the rights and obligations of each party. See J.A. 10-23. As the Department of the Interior has elsewhere observed, "the rights of the government as lessor and the rights of the lessee are embodied in a lease. A lease is a contract * * * ." Memorandum from Frederick N. Ferguson, Ass't Solicitor, Dep't of the Interior, Division of Minerals, to Chief, Conservation Division, Geological Survey, at 1-2 (May 10, 1974); see also William A. Geshuny, Assoc. Solicitor, Indian Affairs, Off. of the Solicitor, to All Regional Solicitors, at 2 (Jan. 20, 1972) ("This provision [2415(a)] would cover situations where the government would seek monetary compensation rather than cancellation, rescission, or specific performance of a contract. We believe the term 'contract' could be fairly construed to include a lease.").

The lower courts have, without exception, reached the same conclusion—an oil and gas lease is a contract. See *OXY USA*, 268 F.3d at 1007 ("We have long recognized that oil and gas leases are contracts."); *Cont'l Oil Co.* v. *United States*, 184 F.2d 802, 817 (9th Cir. 1950) ("We then have a contract which in terms obligates the lessee to pay a stated percentage of the value of the production."); *United States* v. *Ohio Oil Co.*, 163 F.2d 633, 637 (10th Cir. 1947) (holding that a claim under an oil and gas lease "arises under a lease contract" and the "result depends upon the judicial con-

struction of that contract"); *United States* v. *Gen. Petroleum Corp. of Cal.*, 73 F. Supp. 225, 234 (S.D. Cal. 1947) ("Regardless of the type of lease Congress might authorize, a lease executed in accordance with what it has authorized becomes a private contractual matter and is to be interpreted according to the general rules of law respecting contracts between individuals."). Even the unpublished Fifth Circuit opinion on which the government relies for other purposes (Br. in Opp. 19) held that "orders issued by MMS seek monies due under a contract with the government." *Phillips Petroleum Co.* v. *Johnson*, No. 93-1377, 1994 WL 484506, at *2 (5th Cir. Sept. 7, 1994).

The fact that a statutory and regulatory scheme affects the calculation of royalty payments does not alter that conclusion. The legal source of the government's entitlement to a royalty payment from Amoco originates in the lease itself, not the statutes and regulations that govern lease terms and administration. See *Ohio Oil*, 163 F.2d at 637; *Cont'l Oil*, 184 F.2d at 807. Notably, where the terms of a lease are inconsistent with an MMS regulation, it is the language of the lease, rather than the regulation, that determines the government's royalty rights. See 30 C.F.R. § 202.100(b)(3); see also 58 Cong. Rec. 7643 (1919) ("In other words, when the terms of the lease have once been established by the lease itself, those terms cannot then be changed by the action of Congress until the expiration of the term of the lease itself.") (statement of Rep. Anderson).

B. Actions For Allegedly Past-Due Payments And Interest Are Actions for Money Damages

The government likewise errs in asserting (Br. in Opp. 19) that MMS efforts to recover money allegedly owed under a lease do not seek "money damages" but rather seek something "analogous to *equitable* monetary relief." Br. in Opp. 18-19. The assertion is, as an initial matter, incorrect. It is well established that "[a] suit upon a contractual obligation to pay money at a fixed or ascertainable time is a suit to recover *damage* for its breach." *Royal Indem. Co.* v.

United States, 313 U.S. 289, 295-296 (1941) (emphasis added); see p. 49 & n. 24, *infra* (citing additional cases).

The government also asks the wrong question. When determining whether a claim seeks money damages, the issue is not whether the relief can be characterized as "legal" or "equitable." It is instead whether the relief represents substitute "compensation" for a past wrong or instead provides "specific relief." *Bowen* v. *Massachusetts*, 487 U.S. 879, 895 (1988). While "[m]oney damages are * * * the classic form of *legal* relief," *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 255 (1993), this Court has held that even actions seeking equitable relief can "constitute[ ] a claim for 'money damages.'" *Dep't of the Army* v. *Blue Fox, Inc.*, 525 U.S. 255, 263 (1999). The government itself recognized as much in *Blue Fox*, urging that the "'line * * * is not between actions at law and suits in equity.'" U.S. Br. in No. 97-1642, *Blue Fox*, at 31 (quoting *Hubbard* v. *Administrator, EPA*, 982 F.2d 531, 539 (D.C. Cir. 1992) (Randolph, J., joined by R.B. Ginsburg, J., concurring)). "Nor," the government continued, does the distinction follow the line "between 'equitable' and 'legal' remedies," since "'[w]hat may qualify as an 'equitable remedy' * * * is not synonymous with specific relief.'" *Ibid.* (quoting *Hubbard*, *supra*, at 537).

The government now quotes *Bowen* v. *Massachusetts*, 487 U.S. at 893-894, for the proposition that "[t]he fact that a remedy may require one party to pay money to another is not a sufficient reason to characterize the relief as 'money damages.'" Br. in Opp. 18. But *Bowen* explains the distinction between the recovery of money as "damages" and the recovery of money as "specific relief":

> The term "money damages," * * * normally refers to a sum of money used as compensatory relief. Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies "are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled." D. Dobbs, *Handbook on the Law of Remedies* 135 (1973).

Bowen, 487 U.S. at 895 (quoting *Md. Dep't of Human Res.* v. *Dep't of Health & Human Servs.*, 763 F.2d 1441, 1446 (D.C. Cir. 1985)). Applying that distinction, *Bowen* held that "the provision of the Administrative Procedure Act that precludes actions seeking 'money damages' against federal agencies * * * does not bar a State from seeking specific relief to obtain money to which it claims entitlement under the federal Medicaid statute * * * ." *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 212 (2002).

Bowen, however, does not support characterizing a demand for past-due money *under a contract* as specific relief rather than compensatory money damages. To the contrary, while *Bowen* applies to *statutory* obligations, this Court has held it inapplicable where, as here, the action involves "a *contractual* obligation to pay *past due* sums." *Great-West*, 534 U.S. at 212. That is consistent with the universal understanding that "[a] suit upon a contractual obligation to pay money at a fixed or ascertainable time is a suit to recover *damage* for its breach." *Royal Indem. Co.*, 313 U.S. at 295-296 (emphasis added). The law hardly could be clearer that "damages are always the default remedy for breach of contract." *United States* v. *Winstar Corp.*, 518 U.S. 839, 885 (1996). Treatise after treatise agrees.[24]

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[24] See R. Thompson, *et al.*, *Remedies: Damages, Equity and Restitution* § 2.02, at 71 (3d ed. 2002) ("In Anglo-American Law * * * money damages is the dominant remedy for breach of contract."); 24 *Williston on Contracts* § 64:1, at 7 (4th ed. 1990) ("The goal of compensating the promisee following a breach of contract * * * is, to the extent possible through an award of money damages * * * ."); 11 *Corbin on Contracts* § 55.1, at 4 (rev. ed. 2005) ("In the law of contract, the term 'damages' is used to mean compensation in money as a substitute for and the equivalent of the promised performance."); J. Murray, *Murray on Contracts* § 117, at 772-773 (4th ed. 2001) ("The usual remedy available to an aggrieved party when a breach of contract has occurred is an action for the recovery of compensation in the form of money damages to protect the expectation interest, *i.e.*, an award that will place the injured promisee in the same position he would have been in had the contract been performed.").

If there were any doubt that the government's claim here is for compensatory "money damages" rather than for "specific relief," it would be erased by the fact that the MMS order seeks prejudgment interest on top of allegedly past-due royalties. Pet. App. 154a. This Court has long "recognized the compensatory nature of prejudgment interest." *City of Milwaukee* v. *Cement Div., Nat'l Gypsum Co.*, 515 U.S. 189, 196 n.7 (1995); see also *Flint* v. *ABB, Inc.* 337 F.3d 1326, 1330 (11th Cir. 2003) ("[I]nterest on money past due under a contract is a classic form of *compensatory damages* and, as such, does not qualify as 'equitable relief.'") (emphasis added). Moreover, an interest payment that was not due at the time the obligation to pay was allegedly breached cannot be "the very thing to which [the government] was entitled" under the lease. *Bowen*, 487 U.S. at 895. It is instead part of the substitute payment that compensates for the payment obligation that was not fulfilled. As such, it is money damages, not "specific relief." See *Blue Fox*, 525 U.S. at 262-263.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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